



FIONA MA, CPA
STATE BOARD OF EQUALIZATION

August 31, 2017

Keely Martin Bosler
Cabinet Secretary
Office of Governor Edmund G. Brown Jr.
State Capitol
Sacramento, CA 95814

LATE

RE: Amazon

Dear Ms. Bosler,

In May of 2016, Stu Eisenman, President of Avalanche strategies LLC based out of Delaware, contacted my office regarding the State Board of Equalization's audit. Avalanche Strategies, LLC is a Fulfillment by Amazon (FBA) retailer and has orders fulfilled by Amazon's California fulfillment centers. Amazon offers the following services to its FBA retailers: storage of inventory in Amazon warehouses, packaging, delivery, customer service, and returns and an option to assess/collect sales taxes to a state. The utilization of Amazon's California fulfillment centers, as well as Amazon's FBA services, creates nexus in California and a tax reporting obligation for FBA retailers per Assembly Bill 155 (Charles Calderon).

Once Mr. Eisenman was aware that he was required to remit sales tax to California, he immediately started complying. He expressed concern that he was being punished unfairly for being billed for sales taxes over the prior 3 years that he did not charge/collect but should have. Mr. Eisenman contends that this was "unequal" treatment while most FBA retailers who are having orders fulfilled by Amazon in California are not remitting California sales tax.

Mr. Eisenman raises an important issue for the State of California: California is losing billions of dollars in tax revenue from FBA retailers who are not remitting state sales taxes. Earlier this year, my office and I travelled with David Gau, Executive Director of the Board of Equalization to Amazon's Seattle Headquarters to meet with Kurt Lamp, Vice President of State Tax and Tax Ops on January 13, 2017.

During the meeting we learned:

- More than 50% of Amazon's California inventory is from 3rd party sellers that use Amazon's FBAs
- Amazon employs 30k+ employees in California
- Amazon has fulfillment centers in Sunnyvale, Tracy, and San Bernardino with planned expansion in Sacramento and the Central Valley



Amazon gives their 3rd party sellers two options:

1. They can request Amazon to assess/collect state sales taxes however the responsibility to file the actual state sales tax returns remains with the 3rd party seller or
2. The 3rd party seller retains the responsibility to assess/collect/remit state sales taxes. There is an internal Amazon website where 3rd party sellers can track where Amazon ships their products around the U.S.

According to a March 2017 report by Capitol Forum, California lost the most in foregone sales taxes, with missing sales tax revenues of \$431 million. Among 5,000 of the top sellers using FBAs, the sales tax compliance rate for cases in which products were stored in fulfillment centers and sold in the same state was a poor 5.5 percent. (<https://thecapitolforum.com/wp-content/uploads/2017/03/Amazon-2017.03.21.pdf>)

We really do not have good figures to even estimate how much Amazon is selling in California however, we know that a vast majority of FBA retailers are not assessing/collecting/remitting the required sales taxes owed to California. It is also inefficient, if not impossible for the California Department of Tax and Fee Administration (CDTFA) to properly audit thousands of FBA retailers around the U.S. who are having orders fulfilled through Amazon fulfillment centers in the State of California.

Considering the extensive nexus created by Amazon's California fulfillment centers and FBA services, I recommend that the Governor request Amazon to:

1. Assess/collect/remit sales tax on ALL of the FBA retailers who are fulfilling orders with Amazon in the State of California.
2. Assess/collect/remit the DISTRICT sales taxes on all Amazon-owned products. It is our understanding that Amazon only assesses/collects/remits the 7.25% California state level sales tax portion.

We discussed the possibility of accomplishing #1 and #2 with Mr. Lamp back in January, 2017 and hope they would be amenable to furthering the discussion with our office. By doing so, CDTFA would only have to audit one company and compliance would significantly improve. The State of California would also see billions of dollars of additional revenue that could fund vital programs and services.

Thank you for your attention to this matter.

In Peace and Friendship,



Fiona Ma, CPA
Member, Board of Equalization-District 2

February 27, 2018

Hawaii State Senate
415 S Beretania St
Honolulu, HI 96813

LATE

Re: SB NO 2890 Marketplace Taxation

To whom it may concern:

While we are in support of the concept of S.B. No. 2890, the way the bill is currently worded will not ensure Hawaii and its citizens receive all the retail taxes it is entitled to, and not close the online “marketplace” loophole, which allows online marketplaces like Amazon.com to avoid paying taxes on nearly half its sales. This bill with some changes to the wording, can be a big win for small businesses in Hawaii and nationwide. For local retailers, it levels the playing field and eliminates the tax-free pricing advantage that online marketplaces, like Amazon, enjoy.

For too long the “marketplace” loophole allowed online retailers, like Amazon, to thrive by avoiding their obligation to either collect or pay all their taxes on sales. Currently, Amazon does not pay tax on products purchased via 3rd party suppliers which accounts for almost half of all Amazon sales. In addition, working in cooperation with some states like California, Massachusetts, and Rhode Island, Amazon is unfairly and unconstitutionally passing the impossible burden of their multi-state tax collection responsibility on these sales to 3rd party suppliers; which most of them can’t/won’t comply, ensuring tax free products will still be sold on Amazon.

Who is responsible for cleaning up the economic mess from Amazon’s tax games? It’s not Amazon. It’s the state Hawaii, and its citizens, who bear that burden. You have the power to ensure Hawaii and its citizens receive all the taxes it is entitled to, by closing the online “marketplace” loophole and holding companies like Amazon responsible for paying all their taxes.

On January 1st, 2018, the State of Washington was the first state in the nation to have a law take effect where online retailers like Amazon collect taxes on 100% of their sales to Washington residents. Hawaii should follow Washington’s example and hold online retailers accountable for paying their taxes. In doing so, the State of Hawaii could potentially gain between \$36 to 51 million a year in tax revenue according to GAO estimates.

Sincerely,



Alice Kim

Elizabeth Mott LLC

February 27, 2018

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Honolulu, HI 96813



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Sincerely,

Viraphanh Sananikone
Hanalei Company LLC

LATE

SB-2890-SD-1

Submitted on: 2/27/2018 8:31:06 PM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Shawn Lee	Testifying for Dripton LLC	Support	No

Comments:

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~~Over 1.7 million 3rd party suppliers on Amazon are small businesses affected by this false tax logic; whereby every 3rd party supplier would be required to register for tax licenses and file sales tax in at least 24 states including Hawaii, which would also cost thousands annually in filing and service fees, imposing an unfair cost and administrative burden. This interstate tax burden is one that no individual or small business can reasonably afford, and would force many of them to close down.~~

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Sincerely,

[Sylvia Wang](#)

[Super Foods, Inc.](#)

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